State of New Hampshire Banking Department

In re the Matter of: State of New Hampshire Banking ) Case No.: 05-071 ) Order to Show Cause for License ) Revoation

Department,

Patitioner,

and

Financial Resources & Assistance of the Lakes Region Inc. and Scott Farah.

Respondent

## STATEMENT OF ALLECATIONS

The staff of the Banking Department, State of New Hampshire (heroinafter referred to as the "Department") alleges the following facts:

- 1. The Respondent, Financial Resources & Assistance of the Lakes Region Inc. and Scott Farah (herein after "FRA") is licensed as a first mortgage banker and second mortgage home loan lender and a small loan lender since at least 1997 through present. As provided in New Hampshire Banking Laws, the Respondent must comply with all applicable state and federal laws and regulations.
- 2. FRA is a New Hampshire corporation with its principal office or place of business at 15 Northview Drive, Meredith, NH 03253.
- 3. Scott Farah is president of said corporation.
- Count 1 Failure to implement a program to safeguard consumers' sensitive financial information.
  - 4. The Department revalleges all prior paragraphs in this staff petition.
  - 5 FRA, a mortgage company, is a "financial institution" as that term is defined in Section 509(3)(A) of the Gramm-Leach-Bliley Act

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(GLBA), and is therefore subject to the requirements of the Safequards Rule and the Frivacy Rule.

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- The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is define in Section 4 of the FTC Act, 15 U.S.C. 44.
- The Department conducted a regularly scheduled examination of the Respondent on or about October 11, 2004.
- 8. Through loan officers FRA accepts copies of documentation providing sensitive personal information (such as social security numbers, credit reports etc.) in order to assist the consumer in obtaining mortgage financing.
- 9. The examiner conducted an oral interview with Scott Farah, president of FRA, regarding his policies and procedures for handling/destruction of documentation containing sensitive consumer information in compliance with the Gramm-Leach-Billey Act and accompanying Federal Trade Commission ("FTC") rules.
- 18. Mr. Farah informed the examiner that the process for disposing of documents containing sensitive information was to shred said documents. The shredding was specifically assigned to two designated employees who were to shred documents at a shredding machine located at the Respondent's location.
- 11. The examiner received verbal permission from Mr. Farah to remove two garbage bags from the dumpster outside the office to spot check for compliance with the verbal procedure.
- 12. Upon review of the trash bags numerous documents containing sensitive consumer information (such as credit reports, loan applications (1003 forms), etc.) Were found in that and were not shred as previously indicated. See Exhibits 1  $\times$  X.
- Count II Failure to have a written safeguard plan.
  - 13. The Department re-alleges all prior paragraphs in this staff petition.
  - 14.Mr. Farah informed the examiner that FRA did not have a written privacy policy.
- Count III Failure to facilitate an examination
  - 15. The Department re-alleges all prior paragraphs in this staff petition.
  - 16. The examiner discovered a letter from one of FRA's Lenders (First Franklin) on a file brokered by FRA claiming that the borrower's

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income was misrepresented, and mandated that FRA buy the loan back or pay it off with in 20 days.

- 17. The examiner requested FRA provide a complete explanation of the circumstances surrounding its handling of the response to and ultimate resolution of the alleged misrepresentation to the lender.
- 18. FRA failed to provide the examiner with the requested information.
- II. The staff of the Banking Department, State of New Hampshire alleges the following issues of law:
  - The Banking Department ("Department"), has purisdiction to issue an order to show cause for violating NH law pursuant to NH RSA 397-A:17 and RSA 397-A:21 respectively.
  - The Safeguard Rule, which was promulgated by the FTC or May 23, 2002 became effective on May 23, 2503. The rule implements section 501(b) of the GLB Act.
  - 3. 16 C.F.F. 314 (the Safeguard Rule) requires financial institutions to protect the security, confidentiality, and integrity of consumer information by developing a comprehensive written information security program that contains reasonable administrative, technical and physical safeguards.
  - FRA violated the Safeguard Rule because they failed to actually implement their plan (by failing to shred documents).
  - A violation of the Safeguards Rule constitutions an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC act.
  - The GLB Act further requires that the Safeguard program be in writing.
     See 16 CFR 314.3.
  - Victations of the FTC Act and Safeguard Rules are violations of New Hampshire Revised Statute Annotated Chapter 397-A (See MSA 397-A:2 111)
  - d. RSA 397-A:12 provides that licensees shall make freely available to the commissioner or his examiners, the accounts, records, decoments, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination. Failure to provide or respond to an examiner's request for information pertaining to the First Franklin letter is a violation of the Chapter.

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Andrea J. Shir Staff Attorney

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State of New Hampshire Banking Department In re the Matter of:

) Case No.: 05-071

State of New Hampshire Banking

) Order to Show Cause for License 1 Revoation

Department.

Peritioner.

and

Financial Resources & Assistance of the Lakes Region Inc. and Scott

Farah,

Respondent

#### NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 541-A:31, RSA 397-A, and BAN 204.03.

## LEGAL AUTHORITY and JURISDICTION

Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking Department (hereinafter "the Department") may issue an Order to Show Cause why a license should not be revoked. RSA 397-A:17 states that the Department may issue such Order for good cause shown. Further, RSA 397-A:21 states that the Commissioner may impose administrative fines not to exceed \$2,500 per violation for knowingly or negligently violating this chapter.

#### NOTICE OF RIGHT TO REQUEST A HEARING

The above named respondent has the right to request a hearing on this Order to Show Cause, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, and signed by the respondent or by the duly authorized agent of the above named sespondent, and shall be delivered either by hand or certified mail, return receipt request, to the

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Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH 03301.

If respondent fails to request a hearing or respond to the show cause order within 3D calendar days of receipt of this order, respondent shall be deemed in default, and the penalties requested will be imposed.

# STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

The Staff Petition dated December 16, 2005 (a copy of which is attached bereto) are incorporated by reference hereto.

#### ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and consistent with the intent and purposes of the New Hampshire banking laws, and

WHEREAS, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested,

it is hereby ORDERED, that:

- The Respondent show cause why its license should not be revoked;
- The Respondent show cause why fines in the amount of \$17,000.00 in accordance with the above referenced staff petition should not be imposed; and
- 3. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered and administrative penalties being imposed upon the defaulting Respondent.

SIGNED,

Dated: 12 24 45

ROBERT A. FLEURY DEPUTY BANK COMMISSIONER

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing ORDER TO SHOW CAUSE, Docket No. 05-071, has been sent via certified mail on December 2005 to MP SCOTT FARAH, PRESIDENT, FINANCIAL RESOURCES & ASSISTANCE OF THE LAKES DOCKED INC., PO BOX 1158, MEREDITH NH 03255.

Amurea J. Snay Staff Attorney

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State of New Hampshire Banking Department

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In re the Matter of:

) Case No.: 05-071

State of New Hampshire Banking

) Notice of Hearing

Department,

Petitioner,

and

Financial Resources and Assistance)

of the Lakes Region, Inc. and

Scott Farah,

Respondent

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#### NOTICE OF HEARING

Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire 15 Banking Department (hereinafter "the Department") may issue an Order to Show Cause why a license should not be revoked. RSA 397-A:17 17 states that the Department may issue such Order for violations of the chapter. RSA 397-A:2 states that violations of federal law constitutes a violation of Chapter RSA 397-A. Further, RSA 397-A:21 states that the Commissioner may impose administrative fines not to exceed \$2,500 per violation for knowingly or negligently violating this chapter.

The Respondent, Financial Resources & Assistance of the Lakes Region Inc. and Scott Farah (herein after "FRA") is licensed as a first mortgage banker and second mortgage home loam lender and a small loan lender since at least 1997 through present. As provided in New Hampshire Banking Laws, the Respondent must comply with all applicable

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i state and federal laws and regulations. FRA is a New Hampshire corporation with its principal office or place of business at 15 Northylew Drive, Meredith, NH 03253. Scott farah is president of said corporation.

The Department conducted an examination of Respondent on or arout October of 2004. This action is regarding the alleged RSA 397-A:2 / Gramm Leach Bliley Act violations.

The Department alleges the following issues to be determined at hearing:

Issue 1: Whether the Respondents had a written consumer information safeguard policy in place as required by 16 CFR 314;

Issue 2: Whether the Respondents failed to implement a program to safequard customer information as required by 16 CFR 314;

Issue 3: Whether the Respondents' violated RSA 397-A:2 for noncompliance with the Gramm Leach Bliley Act:

Issue 4: Whether the Respondents failed to facilitate the examination by not providing requested information in a timely manner, regarding First Franklin's December 15, 2003 letter about 2 suspect loans First Franklin purchased from Respondents.

Accordingly, an adjudicative proceeding shall be commenced pursuant to 541-A:31 and Chapter 200 of the Department's rules (NH Code of Administrative Rules BAN 200) for the purpose of permitting the Respondents to show compliance with RSA 397-A.

Each party has the right to have an attorney present to represent the party at the party's expense, or may represent itself. Each party has the right to have the Department provide a certified shorthand court reporter at the requesting party's expense. Any such request

must be submitted in writing to the Department at least 10 days prior to a scheduled hearing date.

THEREFORE, IT IS ORDERED, that the bicensee appear before the New Hampshire Banking Department on Thursday, March 9, 2006 at 10:00am, at the Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the purpose of participating in an adjudicative proceeding, at which time the Respondents will have the opportunity to demonstrate why fines should not be imposed and/or why their lending license should not be revoked; and

IT IS FURTHER ORDERED, that if Licensee elects to be represented by Counsel, said Counsel shall file notice of appearance at the earliest possible date; and

IT IS FURTHER ORDERED, that Andrea J. Shaw, Staff Attorney, New Hampshire Banking Department is designated as Hearing Counsel in this matter with authority to represent the public interest within the scope of the Department's authority. Hearing Counsel shall have the status of a party to this proceeding; and

IT IS FURTHER ORDERED, that Todd Wells, shall serve as the Presiding Officer in this proceeding and shall issue a RECOMMENDED DECISION in this matter which shall be reviewed and approved, disapproved or modified by the Bank Commissioner; and

IT IS FURTHER ORDERED, that Respondents shall file an answer to each of the allegations set forth in this Notice of Hearing, and any amendments hereto, by no later than 15 days from receipt. Such answer shall first admit or deny the allegation and then set forth any and all explanations or defenses to the allegation; and

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IT IS FURTHER CROERED, that any proposed exhibits shall be premarked, for identification only, and filed with the Department and provided to the opposing party not later than March 2, 2006. Hearing Counsel shall pre-mark the Department's exhibits with Arabic numbers. Respondents shall pre-mark exhibits with capital letters. An index/list of exhibits providing a brief description of each exhibit with its corresponding pre-marked number or letter shall be filed by both parties simultaneous with the filing of exhibits; and IT IS FURTHER ORDERED, that the parties shall exchange a list of

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all exhibits and witnesses to be called at the hearing with a brief summary of their testimony by no later than February 23, 2006 and shall at the same time file a copy of their respective witness lists with the Presiding Officer; and

IT IS FURTHER ORDERED, that all periods referenced in this notice shall be calendar days. If the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, then the time period shall be extended to include the first business day that is not a Saturday, Sunday, or legal holiday; and

IT IS FURTHER ORDERED, that parties shall file answer/objections to pleadings within ten (19) calendar days of the date the pleading is deemed "filed"; and

IT IS FURTHER ORDERED, that the burden of proof shall be by a preponderance of the evidence, and shall be borne by the Respondent once the Department has set forth a prima fascia case; and

IT IS FURTHER ORDERED, that Respondents' failure to appear at the time, date, and place specified may result in the hearing being held in

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absentia and/or default ruling in favor of the Department, without further notice or opportunity to be heard; and

IT IS FURTHER ORDERED, that the entirety of all oral proceedings shall be recorded verbatim by the Banking Department. Upon request of any party, or upon the Presiding Officer's own initiative, such record shall be transcribed by a certified court reporter designated by the Presiding Officer, and that all costs shall be borne solely by the requesting party. Any such request shall be submitted in writing to the Presiding Officer prior to hearing.

IT IS FURTHER ORDERED, that all documents shall be filed with the Presiding Officer in the form of an original and one (1) copy and shall bear a certification that a copy is being delivered to Hearing Counsel and any other parties to this matter in accordance with NH Code of Administrative Rules Ban 204.08. All documents shall be filed by mailing or delivering them to the New Hampshire Banking Department, ATTN: Todd Wells 64-B Old Suncook Road, Concord, NH 03301. Filing by facsimile or electronic transmission shall not be accepted; and

IT 13 FURTHER ORDERED, that the parties may submit Proposed Orders, which shall include findings of fact and conclusions of law, separately stated, no later than ten (10) days following conclusion of the hearing(s) in this matter; and

IT IS FURTHER ORDERED, that routine procedural inquiries may be made by telephoning Todd Wells at (603)-271-3561, but all other communications with the Presiding Officer and with the Department shall be in writing and shall be filed as provided above. Ex parte communications are forbidden by statute; and

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IT IS FUPTHER ORDERED, that a copy of this Notice of hearing 2 | shall be mailed to Respondents' attorney, Michael Burke, Law Office of ] Gould and Burke, P.O. Box 666, Meredith, New Hampshire, 03253, and that a copy shall also be delivered to Andrea J. Shaw, Hearing Counsel, and to Todd Wells, Presiding Officer, at the New Hampshire Banking Department.

SO ORDERED,

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Robert A. Fleury Deputy Commissioner State of New Hamponire Banking Department

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